

015.00390 (BREYNE 9)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Breyne et al.	)	
		)	
Serial No.:	09/706,122	)	
		)	Examiner: Unknown
Filed:	November 3, 2000	)	
		)	
For:	NAPHTHOPYRANS WITH A	)	Art Unit: 1712
	HETEROCYCLE IN THE 5,6-	)	
	POSITION, PREPARATION, AND	)	
	(CO)POLYMER COMPOSITIONS AND	)	
	MATRICES CONTAINING THEM	)	

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## PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Assistant Commissioner for Patents  
Office of Initial Patent Examination  
Customer Service Center  
Washington, D.C. 20231

Dear Sir:

This is a Petition to request that the holding of abandonment in the above-identified application be withdrawn.

On June 27, 2002, applicants' undersigned attorney spoke, by telephone, with Mr. Timothy M. Williams of the Office of Initial Patent Examination at the U.S. Patent and Trademark Office ("PTO") regarding the status of the above-identified patent application. Mr. Williams informed applicants' undersigned attorney that the application stands abandoned for

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failure to respond to the January 25, 2001, Notice to File Missing Parts.<sup>1</sup>

Applicants submit that the PTO's holding of abandonment was made in error.

More particularly, contrary to the PTO's records, on March 23, 2001, applicants' attorney mailed (i) a "Submission of Missing Parts & Surcharge Under 37 C.F.R. § 1.53(d) and C.F.R. § 1.16(e)"; (ii) a copy of the January 25, 2001, Notice to File Missing Parts; (iii) a signed "Declaration in Original Application"; and (iv) an acknowledgment postcard. Copies of items (i), (ii), and (iii), as mailed on March 23, 2001, are attached. A certification under 37 C.F.R. § 1.8 was included on the "Submission of Missing Parts & Surcharge Under 37 C.F.R. § 1.53(d) and C.F.R. § 1.16(e)", certifying that the "Submission of Missing Parts & Surcharge Under 37 C.F.R. § 1.53(d) and C.F.R. § 1.16(e)" and accompanying "Declaration in Original Application" were being deposited on March 23, 2001.

The PTO date-stamped the acknowledgment postcard and returned it to applicants. A copy of the date-stamped, returned acknowledgment postcard is attached. As indicated by the PTO's

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<sup>1</sup> As to the timeliness of this petition, applicants note that no Notice of Abandonment was received for this case; that applicants filed a Status Inquiry on January 18, 2002 (roughly 14 months from the filing date of the application); and that applicants have not yet received a response to the January 18, 2002, Status Inquiry. Copies of the Status Inquiry, as filed, and of the date-stamped, returned postcard, acknowledging receipt of this Status Inquiry by the PTO on February 19, 2002, are attached.

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date stamp on the returned postcard, the PTO received the "Declaration in Original Application" on March 26, 2001. Applicants submit that, although the date of actual receipt was after the expiration of the two month deadline for filing the "Declaration in Original Application", pursuant to 37 C.F.R. § 1.8, the correspondence should be considered as having been timely filed in view of applicants' having deposited the required papers on March 23, 2001 (i.e., prior to the March 25, 2001, deadline) with the certification specified in 37 C.F.R. § 1.8.

As further evidence that the PTO received the documents mailed on March 23, 2001, applicants point to the enclosed, redacted Monthly Statement of Deposit Account, dated March 30, 2001, which shows that, on March 28, 2001, the PTO charged \$130.00 to the deposit account for Serial No. 09/706,122 (Docket No. Breyne 9). The Monthly Statement also shows that this fee was charged to the deposit account for Fee Code 105, which appears to be the Fee Code that the PTO uses when referring to large entity fees under 37 C.F.R. § 1.16(e) "Surcharge - Late filing fee or oath or declaration".

Since the PTO received the "Declaration in Original Application" and other papers mailed on March 23, 2001 (as evidenced by the date-stamped, returned acknowledgment postcard and the fact that the PTO charged the deposit account for the surcharge specified in 37 C.F.R. § 1.16(e)); and since the "Declaration in Original Application" which applicants mailed on March 23, 2001 should be considered to have been timely filed (in view of the 37 C.F.R. § 1.8 certification); and since the

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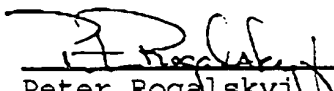
surcharge specified in 37 C.F.R. § 1.16(e) was paid (as evidenced by the enclosed copy of the Monthly Statement), applicants submit that the present holding of abandonment was made in error. Accordingly, applicants request that the holding of abandonment be withdrawn, that applicants receive written notice of such withdrawal, and that the case be examined on the merits.

Applicants believe that no fee is required for this petition. However, in the event that a fee is necessary, the Commissioner is hereby authorized to charge Deposit Account No. 50-0772 for any such fee.

Should any issues remain which can usefully be discussed by telephone, the PTO is invited to contact applicants' undersigned attorney at 716-393-3004.

Respectfully submitted,

July 3, 2002  
Date

  
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